



Caroline Ainslie, Senior Manager
Consumers and Competition
Ofgem
107 West Regent Street
Glasgow
G2 2BA

Email to: Confidencecode@ofgem.gov.uk

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Confidence Code review 2016 consultation

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy is supportive of the CMA remedy to remove the Whole of Market (WoM) Requirement in the Confidence Code, and introduce a requirement for Price Comparison Websites (PCWs) accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers. We agree that PCWs have an important role to play in increasing competition in the market, not only between suppliers but also between PCWs. Our preference is full removal of the WoM requirement because it gives flexibility for PCWs to be able to innovate to provide powerful, user-friendly comparison services appropriate to customers' needs in a competitive market, including developments such as 'meta' PCWs. These services will provide consumers with the information they need to compare a wide choice and tailored offers, in a way that customers find useful.

Ofgem's proposed interim step is likely to introduce confusion for consumers; any view purporting to be a full market view (i.e. WoM) is likely to be misleading and confusing for consumers. This may decrease consumer trust in the role of PCWs in the market. Ofgem's proposed clarification that exclusive deals do not need to be displayed as part of the WoM view, coupled with the removal of the 'simpler choices' component of the RMR rules, is likely to lead to an increase in overall tariffs. This will make it increasingly difficult for PCWs to provide a true comparison service. We therefore consider that it is no longer the role of PCWs to provide a WoM view. Instead, PCWs should act as brokers offering their customers good deals and facilitating switches.

The WoM view will still be available via the Citizens Advice non-transactional PCW that will list all available tariffs for those customers who wish to see this view, although we acknowledge the limitations Citizens Advice may have with accessing information on all tariffs available on the market (including exclusive deals). For this reason, Ofgem should be responsible for monitoring the site. PCWs should also be required to clearly signpost

EDF Energy
40 Grosvenor Place, Victoria
London SW1X 7EN
Tel +44 (0) 20 7752 2187

edfenergy.com
*EDF Energy plc.
Registered in England and Wales.
Registered No. 2366852.
Registered office: 40 Grosvenor Place,
Victoria, London SW1X 7EN*

to this service on their websites, as per the requirement on suppliers to signpost to Citizens Advice in SLC31¹.

Considering the above, we would like to understand in more detail Ofgem's justification behind an intermediate step, the implications for the operation of the code, and the evidence to support this decision. We believe that Ofgem's consultation document does not provide sufficient justification for such an interim step, with the lack of detailed consideration provided seems inconsistent with Ofgem's better regulation obligations, particularly relating to transparency and proportionality. In addition, we request that Ofgem reviews the risks and opportunities of moving straight to the full removal of the requirement. In carrying out such a review we would not expect ease of auditing to be a strong determiner of the code's contents (as seems to be the case with the current proposals), and we would also expect the CMA's desire to allow PCW's to take a more flexible approach to feature as a core requirement.

In addition, EDF Energy recommends a change of terminology within the Code to ensure that it is clear to customers that they are not seeing a true full market view. Clear messaging is essential for any changes to work effectively; this will ensure comparability across PCWs and avoid confusion for consumers. Any messaging needs to state in a clear, consistent manner; which view is being presented, that there may be other deals on the market not available through a specific site, and any commercial agreements that may impact the offers presented to the customer. We therefore recommend that Ofgem issues clear guidance on PCW messaging and introduces a change to the terminology used in the Code. Specifically the term 'Whole of Market' should be removed.

We also have concerns regarding Ofgem's proposals for the Personal Projection (PP). PP is not an area where principles-based regulation will help consumers make informed decisions. Inconsistencies in methodology, and therefore projected costs, are likely to result in customer confusion. The current PP methodology does not provide an easy to understand, clear comparison between the current tariff and any options. It assumes that customers will go onto an SVT at the end of their fixed term contract, which can frequently make the new tariff look much cheaper, even when it is more expensive than their current tariff. This can result in a customer moving tariffs before the end of their current tariff when not in their interests. They will also anticipate savings versus what they have previously paid, which will not materialise.

We propose a primary default view for the PP based on the annualised cost of the new tariff. This would be calculated on an estimate of usage for the next 12 months based on actual historic consumption if known and charged over the whole period at the rate of the

¹ 31.1 The licensee must inform each of its Domestic Customers:

- (a) that Citizens Advice consumer service can assist in providing information and advice to Domestic Customers; and
 - (b) how to contact Citizens Advice and Citizens Advice Scotland,
- by providing that information on or with each Bill or statement of account sent to each Domestic Customer in relation to Charges or annually if the licensee has not sent such a Bill or statement of account to him.

tariff. For simplicity, additional one off discounts, bonuses or loyalty offers should not be taken into account in the primary default view but it may help customers to have options to allow them to be quoted on a different basis e.g. including one off discounts provided any alternative view is clearly explained to the customer and relevant for the customer's circumstances.

Similarly, when a comparison is provided, this should also be based on the annualised cost of the customer's current tariff with no assumption that the customer will revert to the supplier's default tariff if it ends before the end of the 12 month period (i.e. for the purpose of the comparison, the cost of the current tariff will be based on 12 months on the tariff rate even if it ends before the end of the 12 month comparison period). This will ensure that where a comparison is provided, it is made on a like for like basis showing the annualised cost of both the customer's existing tariff and the tariff it is being compared against using the same period and consumption assumptions. It is essential that these assumptions are made available to the customer through clear messaging so that the customer can go onto another PCW, or direct to a supplier and compare quotes.

This approach is clear and is consistent with other industries, enabling the customer to obtain a good deal rather than comparing savings. We anticipate that this could be combined with comparable messaging from suppliers ahead of the end of a fixed term contract. It should be easy for the customer to get a notification that their current tariff is ending, and be informed of the tariff and cost projection of the tariff they would default to if they did not act. They should also be able to compare this with quotes based on the same consumption in PCWs.

Finally, EDF Energy continues to believe that, not only PCWs, but all commercial domestic and non-domestic Third Party Intermediaries (TPI), should be subject to principles-based regulation through direct licensing, requiring them to treat customers fairly and transparently. The introduction of principles-based regulation for suppliers will make it problematic for policing third parties, such as PCWs, as their 'representatives'. It will also be more difficult for PCWs to comply with each supplier's potentially varying approaches to a particular principle. This complicates the contractual relationship between PCWs and suppliers making contracts and operation harder to set up and maintain. Consequently, this could act as a significant barrier to entry for potential PCWs. It is therefore essential that TPIs become subject to direct principles-based regulation in order to provide a consistent approach that consumers can use to make informed switching decisions. This regulation and licensing should be the responsibility of Ofgem, and should apply to all TPIs that transact a sale with a supplier on behalf of a customer.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact John Mason on 07792 965898, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Delamare".

Paul Delamare
Head of Customers Policy and Regulation

Attachment

Confidence Code review 2016 consultation

EDF Energy's response to your questions

CHAPTER: Two

Q1. Do you agree that we should implement the proposed removal of some of the changes we made to strengthen the WoM requirement in the 2015 Code review? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

EDF Energy's preference is for full removal of the WoM requirement, as per the CMA remedy. The proposed interim step is likely to cause confusion for consumers, and limit innovation for suppliers and PCWs.

We acknowledge that the proposed removal of the changes made to strengthen the WoM requirement in the 2015 Code review, is a step towards enabling more effective competition. It will also allow PCWs to be more flexible and innovative in their approach to negotiating exclusive deals with suppliers.

Our preference, however, is for the full removal of the WoM requirement, because there is a risk the proposed approach will be misleading for customers as it will not truly be a full view of the market. PCWs do not show all tariffs now, and according to Ofgem's proposal will not be required to show exclusive deals as part of the WoM view. It will therefore be highly unlikely that any PCW will show a true full market view given the expected rise in exclusive tariffs following the removal of the 'simpler choices' element of the RMR requirements.

It is important that any messaging around the extent of the market, filter choice and default view is clear and consistent across PCWs. As PCWs will not truly show a full market view, we suggest an alternative terminology to 'Whole of Market', such as 'generally available' or 'deals we can offer you today'. Any messaging also needs to make it clear that there may be other deals available on the market not shown on the specific PCW. This will encourage customers to shop around to make an informed switching decision. We support the wording being audited in order to ensure consistency and transparency.

In addition, retaining the requirement for PCWs to show a WoM view, albeit not as a default, is likely to limit the PCWs role to promote competition to the benefit of

consumers. There will still be a full market view available via the Citizens Advice non-transactional PCW that lists all tariffs through a web-based service. We acknowledge that it will be difficult for Citizens Advice to show a truly full market view as the market starts segmenting more with the introduction of exclusive and bundled deals. The focus should therefore be on a complete list of tariffs open to all customers to switch to. This will meet the needs of those customers who wish to see a full market view. PCWs should clearly signpost to this website, as per the requirement on suppliers to signpost to Citizens Advice in SLC31.

We would like to highlight that at present suppliers are required to send information about all available tariffs to PCWs. With the proposed changes to the Code and the increase in availability of exclusive deals, we request clarification from Ofgem that as special exclusive deals do not need to be listed under WoM, suppliers are also not required to provide information about these tariffs to the PCW. Suppliers should, however, provide all information to Citizens Advice for their WoM comparison service.

Q2. With reference to Table 2, do you agree with our rationale, and proposed policy changes around the partial default view? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

EDF Energy's preference is for full removal of the WoM requirement. We do acknowledge that the removal of the restrictions around partial default view gives PCWs some flexibility to innovate. This will lead to more effective competition, not only between suppliers, but also between PCWs.

It is important that there is clear messaging to describe any partial view, to make it very clear that it is not a full market view, using recommended wording such as "our offers available to you today". If the messaging is unclear, there is a risk that the information will result in uninformed switching decisions. In addition, PCWs should be required to signpost to Citizens Advice to highlight to consumers where they can find a WoM view.

Q3. With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

We agree that PCWs should be permitted to pre-tick the filter options of results for consumers, as long as messaging about the filter choice is clear and transparent. We agree that these changes will promote competition between sites and increase the incentive on suppliers to work with accredited sites.

Our preference, however, is for full removal of the WoM requirement to avoid any confusion for consumers. Terminology used in the code should be amended as above, as the view is not truly a full market view; this is misleading for consumers. Clear messaging and terminology is essential so that the customer is clear about what is being shown. If the messaging is unclear there is a risk that the information will result in uninformed switching decisions.

- Q4. With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing? If not, please:**
- **explain why**
 - **suggest and explain any alternative proposals**

We agree that sites should continue to be required to test their messaging with consumers and ensure that this applies to filters and partial views. It is essential that PCWs gather evidence from consumers to inform appropriate messaging.

We are, however, concerned that PCWs carrying out individual testing could result in inconsistent messaging. We therefore support Ofgem issuing further guidance on the testing requirement and carrying out an independent test of all PCW messaging.

- Q5. Do you agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this? If not, please:**
- **explain why**
 - **suggest and explain any alternative proposals**

We agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers, and that Ofgem should monitor this. This will ensure that only appropriate messaging for consumers is used. It will also protect consumers from being misled on what is being shown.

We are however concerned that PCWs carrying out individual testing is likely to result in inconsistent messaging. We therefore support Ofgem issuing further guidance on the testing requirement and carrying out an independent test of all PCW messaging.

- Q6. With reference to Table 3, do you agree that the proposed Code wording reflects our proposals? If not, please:**
- **explain why**
 - **suggest and explain any alternative proposals**

EDF Energy agrees that the proposed Code wording in general reflects Ofgem's proposals.

It is welcome that there will be clarity that special/exclusive deals between other sites and suppliers do not need to be listed under WoM for a particular site. The Code wording should also provide clarity that special/exclusive deals available only direct from the supplier. These do not need to be listed under WoM.

EDF Energy would like to highlight that at present suppliers are required to send information about all tariffs to PCWs. We request clarification from Ofgem that as special exclusive deals do not need to be listed under WoM, that suppliers are also not required to provide information about these tariffs to the PCW. Suppliers should, however, provide all information to Citizens Advice for their WoM comparison service.

CHAPTER: Three

Q7. Do you agree with our rationale, and proposed policy changes around the removal of Personal Projection? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

Q8: Do you agree with our rationale, and proposed policy changes about including the pre-2015 code content on factors an accredited price comparison website should and should not include when deriving a consumer's estimated annual costs? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

EDF Energy does not agree with the proposed policy changes around the removal of the prescriptive methodology for the Personal Projection (PP) within SLC1 in Ofgem's Tariff Comparability consultation. We therefore do not agree with the proposed changes to the Code around PP.

As highlighted in our covering letter, while EDF Energy is generally supportive of the move towards principles-based regulation, PP is not an area where principles-based regulation is going to help consumers make informed decisions. We believe the risks of allowing suppliers to define their methodology outweigh the benefits, because inconsistencies in methodology, and therefore projected costs, will result in customer confusion resulting in a decrease in trust in suppliers and PCWs alike.

Furthermore, with an increase in overall tariffs on offer and the introduction of exclusive offerings, it is going to be more difficult to provide a comparison service. This is why the CMA in its Final Report presents PCWs as brokers rather than repositories of all available tariffs. In addition, such a 'repository of all available tariffs' does not exist in other comparable industries, such as insurance.

The current PP methodology does not provide an easy to understand, clear comparison between the current tariff and any options. It assumes that customers will go onto an SVT at the end of their fixed term contract, which can frequently make the new tariff look much cheaper, even when it is more expensive than their current tariff.

We propose a primary default view for the PP based on the annualised cost of the new tariff. This would be calculated on an estimate of usage for the next 12 months based on actual historic consumption if known and charged over the whole period at the rate of the tariff. For simplicity, additional one off discounts, bonuses or loyalty offers should not be taken into account in the primary default view but it may help customers to have options to allow them to be quoted on a different basis e.g. including one off discounts provided any alternative view is clearly explained to the customer and relevant for the customer's circumstances.

Similarly, when a comparison is provided, this should also be based on the annualised cost of the customer's current tariff with no assumption that the customer will revert to the supplier's default tariff if it ends before the end of the 12 month period (i.e. for the purpose of the comparison, the cost of the current tariff will be based on 12 months on the tariff rate even if it ends before the end of the 12 month comparison period). This will ensure that where a comparison is provided, it is made on a like for like basis showing the annualised cost of both the customer's existing tariff and the tariff it is being compared against using the same period and consumption assumptions. It is essential that these assumptions are made available to the customer through clear messaging so that the customer can go onto another PCW, or direct to a supplier and compare quotes.

This approach is clear and consistent with other industries, enabling the customer to obtain a good deal rather than comparing savings. We anticipate that this could be combined with comparable messaging from suppliers ahead of the end of a fixed term contract. It should be easy for the customer to get a notification that their current tariff is ending, and be informed of the tariff and cost projection of the tariff they would default to if they did not act. They should also be able to compare this with quotes based on the same consumption in PCWs.

Q9. With reference to Table 4, do you agree that the proposed Code wording reflects our proposals? If not, please:

- **explain why**
- **suggest and explain any alternative proposals**

The most effective solution to providing consumers with an accurate comparison is prescription of a more straightforward personal tariff comparison based on annualised costs of the current tariff vs. potential new tariffs, as described above.

We therefore support prescription of this solution within the Code wording. We also recommend including a requirement in the Code for PCWs to have clear messaging outlining how they have calculated estimated annual costs.

Q10. Do you agree with our assessment that no changes are required to the TIL references within the Code?

EDF Energy agrees that there are no changes required to the TIL references within the Code. We agree that the TIL remains a useful comparison tool for consumers to make informed switching decisions. However, suppliers should have the flexibility to display the TIL in the most appropriate format, and only the information that needs to be displayed should be prescribed.

CHAPTER: Four

Q11. Do you agree that these initiatives are out of scope for this review and that we should monitor their progress to be aware of potential impacts in the future of these initiatives?

EDF Energy agrees that the initiatives are out of scope for this review but would like to understand further detail about the scope and timetable of a future review.

EDF Energy supports PCWs having access to ECOES data to avoid inconsistencies in data and errors in switching, resulting on a better live on supply experience. We would like to highlight that the CMA report proposed that PCWs should have access to ECOES and DES databases to enhance their ability to improve consumer engagement. We therefore encourage Ofgem to review this initiative as a priority and would be keen to understand Ofgem's timetable for review.

We acknowledge the importance of PCWs having access to certain DCC data in order to easily identify which customers are eligible for Smart and offer them the appropriate tariffs. Any access to more granular data such as consumption data must be reviewed carefully in order to protect consumers' data privacy.

We are supportive of TPIs having access to Midata in order to make more effective use of customer data as per the CMA remedy. It is important, however, to ensure that this initiative is working well and all suppliers are compliant with the requirements before it is made available to TPIs. We would like to understand the timetable for a more formal rollout, the policy intent, and the prescriptive parameters.

Q12. Do you believe there are any other initiatives we should be keeping abreast of to ensure a joined-up approach to our policy development work?

EDF Energy would like to understand Ofgem's timetable for restarting the non-domestic TPI Code of Practice.

EDF Energy works with the reputable TPI market in both SME and I&C segments, and fully supports its ongoing development. Ensuring correct practices by TPIs in order to build trust in this area is vital. That trust can only come through: transparency on commission and energy price; honest and accurate marketing and promotion of services; and, fair and robust comparisons. We note the importance that the CMA places on the role of these parties and strongly believe that their behaviour must be scrutinised as part of the enduring arrangements put in place to support customers.

As mentioned in our covering letter, the introduction of principles-based regulation will also make it problematic for suppliers when policing third parties. It is therefore essential that Ofgem clearly map out behaviours and expectations for TPI activity through the development of a Code of Practice. The regulation and governance of the Code of Practice should be the responsibility of Ofgem, and should apply to all TPIs that transact a sale with a supplier on behalf of a customer. EDF Energy would be keen to work with Ofgem to support the development of a Code of Practice underpinned by a licence condition as a step towards improving consumer confidence and trust in TPIs.

EDF Energy continues to believe that the licensing of non-domestic TPIs by Ofgem is the optimum way to enforce appropriate conduct to assure consumers that they can use TPIs with confidence and trust. All commercial TPIs should be subject to principles-based regulation through direct licensing, requiring them to treat customers fairly and transparently. This will provide a consistent approach to regulation to assist customers in making informed switching decisions.

EDF Energy
September 2016